

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

RAFAEL VARELA,

Plaintiff,

**1:10-cv-1390
(GLS/DRH)**

v.

THE COUNTY OF RENSSSELEAR¹ et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Rafael Varela
Pro Se
450 Madison Street
Troy, NY 12180

FOR THE DEFENDANTS

*Rensselaer County,
Bailey Kelleher & Johnson, P.C.
& John W. Bailey*
Bailey, Kelleher Law Firm
Pine West Plaza 5
Suite 507
Washington Avenue Extension
Albany, NY 12205

JOHN W. BAILEY, ESQ.
WILLIAM C. FIRTH, ESQ.

City of Troy, Troy P.D. & Epstein
City of Troy, Corporation Counsel
Department of Law
1776 6th Avenue
Troy, NY 12180

IAN H. SILVERMAN, ESQ.
CHARLES A. SARRIS, ESQ.
JAMIE B. THOMAS, ESQ.

¹ The Clerk is directed to amend the caption to correct the spelling of "Rensselaer."

Office of Joshua A. Sabo
287 North Greenbush Road
Troy, NY 12180

JOSHUA A. SABO, ESQ.

Gary L. Sharpe
Chief Judge

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff *pro se* Rafael Varela commenced this action in New York State Supreme Court alleging his constitutional rights were violated by defendants. (*See generally* Dkt. No. 1, Attach. 1.) Following defendants removal to this court, (see Dkt. No. 1 at 1-4), Varela filed, among other things, a motion for a preliminary injunction (PI) and temporary restraining order (TRO). (See Dkt. No. 50.) In a Report-Recommendation and Order (R&R) filed March 8, 2012, Magistrate Judge David R. Homer recommended that Varela's motion be denied.² (*See generally* R&R, Dkt. No. 67.) Pending are Varela's objections to the R&R. (See Dkt. No. 74.) For the reasons that follow, the R&R is adopted in its entirety.

II. Standard of Review

² The Clerk is directed to append the R&R to this decision, and familiarity therewith is presumed.

Before entering final judgment, this court routinely reviews all report and recommendation orders in cases it has referred to a magistrate judge. If a party has objected to specific elements of the magistrate judge's findings and recommendations, this court reviews those findings and recommendations *de novo*. See *Almonte v. N.Y. State Div. of Parole*, No. 04-cv-484, 2006 WL 149049, at *6-7 (N.D.N.Y. Jan. 18, 2006). In those cases where no party has filed an objection, or only a vague or general objection has been filed, this court reviews the findings and recommendations of the magistrate judge for clear error. See *id.*

III. Discussion

Varela's first objection to the R&R addresses Judge Homer's purported misunderstanding of the "Constitutional right to freedom and liberty of Mr. Varela (to drive where ever he wants)." (Dkt. No. 74 ¶ 2.) Based on this right—which essentially amounts to the right to drive without restriction—Varela avers that Judge Homer erred when he recommended that the PI/TRO be denied. (See *id.* ¶¶ 1-3.) Simply put, the court disagrees. Varela's claim is wholly unsubstantiated, and as such, is at best, a general or vague objection. (See *id.* ¶¶ 2-8.) Likewise, Varela's second objection, (see *id.* ¶¶ 10-15), to Judge Homer's footnote is of no

moment as the notation was *dicta* in the background section of the R&R.³ (See R&R at 3 n.3.) More importantly though, Varela's objection is moot as Judge Homer permitted him to amend his complaint, in which he can articulate the substance of his objection. (See R&R at 11, 14.) Because Varela fails to raise any specific errors in the R&R, the court concludes that a *de novo* review is unnecessary. Having found no clear error in the R&R, the court accepts and adopts Judge Homer's R&R in its entirety.

IV. Conclusion

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that the Clerk is directed to amend the caption to correct the spelling of "Rensselaer"; and it is further

ORDERED that Magistrate Judge David R. Homer's March 8, 2012 Report-Recommendation and Order (Dkt. No. 67) is **ADOPTED** in its entirety; and it is further

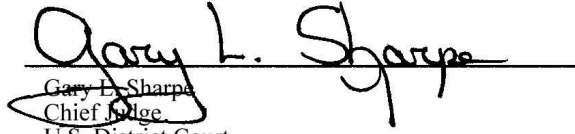
ORDERED that Varela's motion for PI/TRO (Dkt. No. 50) is **DENIED**; and it is further

³ Varela filed a Revised Objection to the R&R on March 27, 2012. (See Dkt. No. 78.) In addition to being untimely, (see R&R at 14), the Revised Objection is irrelevant as the inclusion of the Family Court order—the only substantive difference between the original and revised objection—addresses Judge Homer's footnote, not the propriety of a PI/TRO. (See Dkt. No. 78 at 3-7.)

ORDERED that the Clerk provide a copy of this Memorandum-
Decision and Order to the parties.

IT IS SO ORDERED.

April 17, 2012
Albany, New York



Gary L. Sharpe
Chief Judge
U.S. District Court